



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 29, 2008

The Honorable Martha Fuller Clark, Chairman
Energy, Environment and Economic Development Committee
Legislative Office Building, Room 102
Concord, New Hampshire 03301

Re: SB 403-FN, relative to large withdrawals of water from aquifers within
municipal boundaries

Dear Chairman Fuller Clark:

Thank you for the opportunity to comment on SB 403, which would allow a municipality to over-ride and deny a large groundwater withdrawal that has received a permit from DES, providing that some portion of the aquifer from which the withdrawal would occur is located within the municipality. The Department of Environmental Services (Department) opposes this bill.

In 1998, the Groundwater Protection Act, RSA 485-C, was amended to require that new large groundwater withdrawals (withdrawals exceeding 57,600 gallons over any 24-hour period) obtain a permit from the Department to ensure that no unmitigated impacts occur to surrounding water resources and water users. The existing state permitting process recognizes that both the availability of water resources and the impacts of withdrawals are not limited by municipal boundaries. A state-level process recognizes that water is a shared resource that should be managed in a sustainable manner for the benefit of all New Hampshire citizens.

HB 403 proposes to establish a process by which a large groundwater withdrawal permitted by the Department may be denied at any time provided that two-thirds of a city or town's voters support the denial. The Department opposes this bill for several reasons. If enacted, HB 403 would limit the State's ability to effectively manage water resources through the current permitting system in a manner consistent with the State's role as the steward of these resources. The number of communities that potentially could deny a project for a given withdrawal in a large aquifer "within the boundaries" of many communities would likely make permitting unworkable for all future applicants, including municipal water suppliers whose aquifers extend into other jurisdictions.

We also point out that there are complex legal issues involving the rights of property owners to the reasonable use of groundwater that this proposed process could potentially implicate. The lack of any criteria for denials by towns would set the stage for standardless decision-making at the local level that could potentially conflict with the science-based decisions that are generated by the state permitting program.


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Providing for local approval of large groundwater withdrawals has been considered several times in the past by the Legislature. Each time, after careful consideration, the Legislature has determined that municipalities should be given ample opportunity to comment on state permit applications, but that they should not have veto power. We understand that this conclusion has been reached in recognition of the State's role as public trustee of groundwater resources and of the fact that the boundaries of underground aquifers do not necessarily correspond to municipal boundaries.

Since 1998, the Groundwater Protection Act has been strengthened by three significant amendments, including the addition of clearer requirements for municipal input into the state permitting process. The permitting program continues to be reviewed by the Commission to Study Issues Relative to Groundwater Withdrawals (the "Groundwater Commission") established by the Legislature for this purpose. The Groundwater Commission has already made recommendations that have been implemented by the Department and the Legislature in previous legislative sessions to improve the program, and will continue to evaluate this program and make further recommendations in the future. Through this history of improvement, New Hampshire's large groundwater withdrawal permitting program has evolved to become among the most comprehensive in the country and is expected to continue to improve into the future.

Again, thank you for this opportunity to comment on this bill. Please feel free to call me at 271-2958, or Sarah Pillsbury at 271-1168, if you have any questions or need additional information.

Very truly yours,


for Thomas S. Burack
Commissioner

cc: Senator Cilley
Representative Spang
Representative Moody
Representative Beaulieu
Representative Buco